

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

Inquiry Concerning Judge Walter L. Blackwell III
No. 150

DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT

This is a disciplinary matter concerning Judge Walter L. Blackwell III of the San Bernardino County Superior Court. Formal proceedings having been instituted, this matter is before the Commission on Judicial Performance pursuant to rule 127 of the Rules of the Commission on Judicial Performance (discipline by consent).

APPEARANCES

Trial Counsel for the Commission on Judicial Performance is Jack Coyle. Counsel for Judge Blackwell is Thomas C. Brayton of Jones, Mahoney, Brayton & Soll.

PROCEDURAL HISTORY

Formal proceedings were instituted in this matter by a Notice of Formal Proceedings dated July 14, 1998. The Notice set forth one count of misconduct pursuant to article VI, section 18 of the California Constitution. On August 31, 1998, Judge Blackwell filed a response to the Notice of Formal Proceedings. As provided for by rule 121(b) of the Rules of the Commission on Judicial Performance, the Supreme Court appointed three special masters to conduct an evidentiary hearing and to prepare a written report.¹

CONSENT AGREEMENT

Following the submission of status reports, but prior to the holding of a prehearing conference, Judge Blackwell and Trial Counsel submitted the following Joint Statement of Basis for Public Admonishment.

Pursuant to Rules of the Commission on Judicial Performance, rule 127, respondent and examiner submit the following stipulation in Inquiry Concerning Judge Walter L. Blackwell III, No 150:

Respondent was an active member of the State Bar of California from January 1970 until he took judicial office on January 1, 1995. The conduct

¹ The special masters are Justice Paul Turner of the Court of Appeal, Second Appellate District, Division Five (presiding), Judge Aviva K. Bobb of the Superior Court of Los Angeles County and Judge Barbara Zuniga of the Superior Court of Contra Costa County.

described herein occurred while respondent was a practicing attorney. However, because respondent now holds judicial office, the State Bar is at present without jurisdiction to impose discipline. (See *State Bar v. Superior Court* (1929) 207 Cal.323.)

Respondent was employed by Fidelity Federal Bank ("Fidelity") from approximately 1974 until July 1988 holding the positions of general counsel and executive vice president. Upon the termination of respondent's employment, he entered into a separation, consulting, and settlement agreement with Fidelity. Pursuant to the agreement, respondent was to receive severance and consulting payments from Fidelity from July 1988 through October 22, 1989. Respondent received these payments as agreed.

Fidelity inadvertently sent respondent eight checks after October 22, 1989. Respondent cashed the eight checks, as follows: on November 2, 1989, a check dated October 31, 1989, in the amount of \$3,030.36; on November 17, 1989, a check dated November 15, 1989, in the amount of \$3,030.36; on December 4, 1989, a check dated November 30, 1989, in the amount of \$3,030.36; on December 18, 1989, a check dated December 15, 1989, in the amount of \$3,030.36; on January 4, 1990, a check dated December 29, 1989, in the amount of \$3,030.36; on January 16, 1990, a check dated January 15, 1990, in the amount of \$2,714.81; on February 2, 1990, a check dated January 31, 1990, in the amount of \$2,714.81; on February 16, 1990, a check dated February 15, 1990, in the amount of \$2,714.81. Respondent did not notify Fidelity that he had received and cashed these checks.

In approximately October 1989, former Fidelity President, CEO and Chairman of the Board, James Taylor, became involved in litigation involving Fidelity. Fidelity agreed, in writing, to pay Taylor's attorney fees, and Taylor retained respondent to represent him in a lengthy deposition. However, a dispute arose which resulted in Fidelity refusing to pay the attorney fees for respondent's representation of Taylor. On November 19, 1989, respondent filed suit against Fidelity for approximately \$15,000.00 in attorney fees and one million dollars in punitive damages, under *Walter L. Blackwell III v. Citadel Holding Corporation, et al.* Los Angeles Superior Court, East District, case no. EAC 077585. (The "Blackwell action.")

Negotiations ensued between respondent and attorneys for Fidelity. Fidelity eventually agreed to settle the Blackwell action by paying respondent approximately \$15,000.00. Respondent dismissed his claim for punitive damages. Respondent told Fidelity that he would agree to accept a settlement for that amount only upon the condition that Fidelity agree to a general release of all claims against him, known and unknown. During settlement negotiations, respondent was asked if he knew of any claims Fidelity might have against him. Despite knowing that Fidelity had a potential claim against him for cashing the inadvertently issued checks, respondent did not disclose such information.

Attorneys negotiating on behalf of Fidelity were unaware of the inadvertently issued checks.

Fidelity agreed to the general release. During the course of the negotiations, Fidelity had sent respondent a check in the amount of \$10,162.00 and another check in the amount of \$4,910.00 ("settlement checks"), which respondent had been holding. The total of the two settlement checks was agreed upon as the monetary settlement. Respondent executed the settlement agreement in the Blackwell action on January 23, 1990. On January 26, 1990, Respondent negotiated the settlement checks.

In approximately February 1992, Fidelity discovered that they had inadvertently issued the eight checks to Respondent and requested that respondent return the money. Respondent refused to return all of the money. In approximately October 1992, Fidelity sued respondent under Fidelity Federal Bank v. Walter L. Blackwell, III, San Bernardino Superior Court, case no. SCV 00718. Respondent raised the settlement agreement in the Blackwell action as a defense to the repayment of the overpayments. On March 1, 1994, the case proceeded to a nonjury trial. On June 3, 1994, the court filed a Statement of Decision. A judgment was entered against respondent (the "defendant" in that action) in the amount of \$32,000.00, plus interest and costs.

The trial court found that respondent's failure to disclose, during settlement negotiations in the Blackwell action, that he had cashed inadvertently issued checks was "an intentional concealment of a material fact, unknown to the plaintiff, which the defendant was under a duty to disclose, when specifically asked. To make matters worse the defendant even refused to return the money from two checks which were issued and cashed after the execution of the settlement agreement. ¶ The only missing element to constitute outright fraud is detrimental reliance by plaintiff." The court further found that respondent's "acts of receiving, cashing and steadfastly refusing to return the amount of the checks when demanded constitutes malice and fraud."

In an unpublished opinion filed May 14, 1997, in case no. E01499, the Court of Appeal Fourth District, Division Two, upheld the judgment of the trial court, except that it reversed the trial court's award of punitive damages against respondent. Promptly upon the judgment becoming final, respondent paid the judgment in full.

Respondent and examiner agree that the foregoing constitutes conduct prejudicial to the administration of justice that brings the judicial office into disrepute within the meaning of article VI, section 18 of the California Constitution. Respondent and examiner further agree that based upon the foregoing respondent shall be publicly admonished.

The Joint Statement of Basis for Public Admonishment is signed by Judge Blackwell, his attorney, and by Trial Counsel. It is accompanied by an affidavit by Judge Blackwell admitting

the truth of the charges as alleged in the Notice of Formal Proceedings, stating that he freely and voluntarily consents to the sanction of public admonishment, and waiving review by the Supreme Court.

DISCIPLINE

The Commission adopts the Joint Statement of Basis for Public Admonishment. The Commission finds that Judge Blackwell's actions constitute conduct prejudicial to the administration of justice that brings the judicial office into disrepute within the meaning of article VI, section 18 of the California Constitution and that a public admonishment is the appropriate sanction for that conduct.

This decision and order shall constitute the order of public admonishment.

Dated: February ___, 1999

Robert C. Bonner
Chairperson